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The Supreme Court of the United States

OCTOBER, 1991 TERM

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Petitioner

—v—

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the court of appeals err when it dismissed the IBT's appeal of the district court's order affirming the veto, by the Independent Administrator, of the IBT's future payments to Windsor Graphics, Inc. pursuant to a contract for printing services?

(a) Can the IBT appeal the district court order prior to the entry of final judgment?

(b) Does the IBT's compliance with the veto render the appeal moot, thereby preventing the IBT from protecting its reputation from the Independent Administrator's and the district court's unsubstantiated conclusions of racketeering activity?

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

United States of America,

Plaintiff-Appellee,

v.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,

William J. McCarthy,

Defendants-Appellants.

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OPINIONS BELOW

United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, No. 88 Civ. 4486 (DNE) (S.D.N.Y. June 18, 1991).

The district court's opinion and order is reported at 765 F. Supp. 1206.

United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, No. 91-6160 (2nd Cir. September 17, 1991).

The court of appeals' order is not reported.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

On September 17, 1991 the United States Court of Appeals for the Second Circuit heard argument on and granted the Government's motion to dismiss an appeal by

the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("IBT") from the district court's June 18, 1991 opinion and order.

The IBT submits this Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. §1254(1). This case is appropriate for Supreme Court review because the court of appeals' order unfairly punishes the IBT, which by acting to further the interests of its membership, is now deprived of an opportunity to protect its reputation against unsubstantiated conclusions of racketeering activity.

STATUTES

18 U.S.C. §1951:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

* * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

* * *

18 U.S.C. §1961(1):

As used in this chapter [18 USCS §§ 1961 et seq.] -

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: . . . section 1951 (relating to interference with commerce, robbery, or extortion). . . .

18 U.S.C. §1962:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

* * *

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. §1964:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any

person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

* * *

28 U.S.C. §1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATEMENT OF THE CASE

On March 14, 1989, the IBT, acting through the members of its General Executive Board, entered into a settlement of a civil action brought by the Government against the IBT, its General Executive Board, and others, alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §1961, et seq.. The complaint alleged that the IBT had been dominated, exploited and controlled by La Cosa Nostra figures. See, e.g., United States v. Intern. Broth. of Teamsters, 931 F.2d 177, 186 (2d Cir. 1991). The settlement was approved by the district court (Edelstein, J.) in the form of a consent decree (the "Consent Decree").[1/]

Among other things, the Consent Decree provides for a court-appointed Independent Administrator with broad powers to oversee the affairs of the IBT, including the power to veto expenditures of the IBT. However, unlike broader powers granted to him elsewhere in the Consent Decree,[2/] the Administrator may only exercise his veto if he reasonably believes that the action or proposed action

> constitutes or furthers an act of racketeering activity within the definition of Title 18 U.S.C. §1961, or furthers or contributes to the association . . . of the IBT or any of its members with L[a] C[osa] N[ostra] or elements thereof . . . .

(A. 45-46.) This limitation on the Administrator's remedial power expressly applies to

> any expenditures or proposed expenditure of International Union funds . . . approved by any officers, agents, representatives or employees of the IBT . . . .

(A. 46.)

According to the Consent Decree, the Administrator's authority to veto actions of the IBT "shall terminate after the certification of the 1991 election results by the Election Officer . . . ." The vote will take place in December 1991. Certification of the election results will take place within one month thereafter. (A. 31.)

The Consent Decree provides:

> Upon satisfactory completion and implementation of the terms and conditions of this order, this Court shall entertain a joint motion of the parties hereto for entry of judgment

dismissing this action with prejudice and without costs to either party.

(A. 31.)

1. The Administrator's Veto of Contract Payments to Windsor Graphics, Inc.

In March 1989, the IBT awarded the contract for printing The International Teamster magazine to Windsor Graphics, Inc. ("Windsor"), a Massachusetts corporation owned by IBT General President William McCarthy's son-in-law. An investigation of the contract award ordered by the Administrator resulted in an Auditor's Report issued on October 10, 1990. (Affidavit of Rudolph F. Pierce in Opposition to Government's Motion to Dismiss, dated August 9, 1991, ¶5, p.4, hereinafter cited "Pierce Aff.")

The Auditor's Report was highly critical of the bidding process leading to the award of the printing contract to Windsor.[3/] After reviewing the Auditor's Report and prior to any action by the Administrator, the IBT agreed to cancel the Windsor contract and rebid the printing contract in accordance with the generally accepted bidding principles cited in the Auditor's Report. The Windsor contract was subsequently cancelled. A new printer was hired to print the magazine until the rebidding was completed. (Pierce Aff. ¶6, p.4.)

Despite the fact that the IBT had already agreed to rebid the printing contract in accordance with the auditor's recommendations, on January 29, 1991, the

Administrator vetoed any further expenditures by the IBT to Windsor in connection with the publication of The International Teamster magazine (the "Veto"). The Administrator issued a report to the district court in which he adopts, among others, the following findings of his auditor:

> [T]he competitive bidding process used by the IBT was seriously flawed in that: bid specifications were not prepared; inconsistent bid information was obtained; sealed bids were not used, providing the opportunity for bid data to be provided to the successful bidder; bids were only requested from three companies; bid evaluation was performed by unqualified individuals; one bid was withheld from the evaluation process; a written contract was not prepared; and a need to prepay [the] paper supplier was excluded from the bid.

* * *

> The process used for the current contract, although seriously flawed, has resulted in a substantial reduction in the costs of the magazine; however there are no assurances that the IBT actually received the lowest price available.

(Declaration of Edward T. Ferguson, III in Support of Government's Motion to Dismiss, dated August 1, 1991, Exh. B., p. 7, emphasis added, hereinafter cited "Ferguson Dec.")

The Administrator may not, according to the Consent Decree, veto an expenditure or proposed expenditure of IBT funds unless he reasonably believes that the expenditure would constitute or further an act of racketeering as defined in RICO, or would further or contribute to the association of the IBT or its members with La Cosa

Nostra. (A. 45-46.) As the basis for vetoing expenditures to Windsor, the Administrator determined that, by implementing a hidden plan to award the printing contract to Windsor, IBT General President William McCarthy and Communications Director F.Z. Zeller, "aided and abetted an extortion of the [IBT] members' right to 'a democratic participation in the affairs of their union.'" (Ferguson Dec., Exh. B at 34.) The Administrator alleged that the activity violated 18 U.S.C. §1951. (Ferguson Dec., Exh. B. at 34; A. 5-6.)

2. The District Court's Opinion and Order.

As permitted by the Consent Decree, the Administrator filed an Application with the

district court seeking approval and enforcement of the Veto. Despite the fact, acknowledged in the Administrator's Report, that the IBT had already agreed to cancel the Windsor contract and rebid it in accordance with the auditor's recommendations (Ferguson Dec., Exh. B at 35), the Government filed a memorandum urging the district court to approve the Administrator's Application. (Government's Memorandum in Support of Application XX by the Independent Administrator, dated March 4, 1991.) The IBT filed an objection to the Independent Administrator's Application. On June 18, 1991, the district court issued a published opinion and order affirming the Veto.[4/] In its

June 18 opinion and order, the district court specifically acknowledged that, in light of the IBT's agreement to rebid the contract, "[t]he only issue on appeal to this Court is the . . . Administrator's finding that McCarthy and Zeller's actions furthered an act of racketeering." (A. 6-7.)

The IBT's objection to the Veto was based upon the Administrator's failure to identify any factual support for several necessary elements of extortion, which the Administrator found to be the "racketeering activity" giving rise to his veto authority.

In consideration of the issue of racketeering activity, the district court discussed past union wrongdoing without acknowledging the Administrator's failure

to offer factual support for his belief that the award of the printing contract to Windsor Graphics resulted from extortion. The court stated:

> A decision by the Independent Administrator to exercise his veto power because of an action of the IBT that furthers the loss of the members' LMRDA rights must be considered in light of the fact that the membership's LMRDA rights that [sic] have been taken away through decades of institutionalized corruption. The explicit purpose of the Consent Decree was to eliminate corrupt IBT practices. To that end, the Consent Decree contains express admissions of allegations of wrongdoing and corruption in the IBT. Consent Decree at 2.

(A. 21-22.) The court also noted that the conduct of McCarthy and Zeller "furthered the longstanding denial of the [IBT]

membership's LMRDA rights through extortionate acts of their leadership. (A. 23, emphasis added.) No facts are cited to support the conclusion that extortion was committed. The court's apparent assumption is that the required evidentiary standard for determining extortion should be relaxed "in light of . . . decades of institutionalized corruption."

Neither the district court nor the Administrator addressed the obvious point that evidence to support each element of extortion should be required for the Administrator to reasonably believe that an act of racketeering activity occurred. In exercising his Veto the Administrator offered no evidence of (1) the identity of

the principal who committed the extortion allegedly aided and abetted by McCarthy and Zeller; (2) the actual or threatened use of force, violence or fear in connection with the alleged extortion; (3) an intent by anyone involved in the Windsor matter to exploit fear instilled in any alleged extortion victim(s); (4) any reasonable fear on the part of any alleged extortion victim(s); or (5) the obtaining of any specific property from any victim(s).

3. The Order of the Court of Appeals for the Second Circuit.

On June 20, 1991, the IBT filed a notice of appeal from the district court's opinion and order. IBT General President

William McCarthy filed a notice of appeal from the same opinion and order on July 18, 1991. The Court of Appeals for the Second Circuit consolidated the two appeals on July 31, 1991. The Government, on August 1, 1991, moved to dismiss both appeals.

On September 17, 1991, the Second Circuit heard argument and issued its order granting the motion to dismiss.

ARGUMENT

I. THE DISTRICT COURT'S OPINION AND ORDER IS APPEALABLE.

The IBT bases this petition on its belief that it is manifestly unfair for the

Administrator to issue a public report charging the IBT and its General President with racketeering after the IBT had already agreed to the remedy sought in the report; for the Government then to urge the district court to approve the Administrator's findings of racketeering activity despite the IBT's agreement to the remedy; for the district court to issue a published opinion approving of the Administrator's findings of racketeering activity; and, when the IBT appeals that decision, for the Government to reverse its earlier position and claim that the appeal is moot. The IBT contends that, under these circumstances, the unsubstantiated conclusion by the Administrator and the

district court that the union engaged in racketeering activity creates a continuing controversy that can be appealed prior to a final judgment in this civil RICO action. The administration of this complex consent decree requires a flexible approach to appellate issues. A flexible approach in determining when an appeal may be taken and when a controversy is moot is necessary to prevent the unfairness that would result from the dismissal of the IBT's suit challenging unfounded accusations and conclusions of racketeering activity.

Unlike its action in the appeal of this case, the Court of Appeals for the Second Circuit has repeatedly allowed appeals arising from the implementation of consent

decrees.[5/] Indeed, the Second Circuit recently considered such an appeal in this very case. In United States v. Intern. Broth. of Teamsters, 931 F.2d 177, 182-83 (2d Cir. 1991), the court of appeals entertained the IBT's appeals from the district court's Election Rules Order and Staffing Order. In finding that the exercise of appellate jurisdiction was appropriate, the Second Circuit stated:

> The administration of complex consent decrees such as the present one gives rise to issues of appellate review that differ from those in ordinary litigation. Whereas rulings in ordinary litigation can be reviewed for error and effect on the judgment after that judgment is final, rulings in the course of administering a Consent Decree concern implementation of the judgment itself, and often require intermediate acts by parties that may

> be unreviewable if appeals are delayed until compliance is final. A flexible approach is thus necessary . . . .

931 F.2d at 183.

The need for a flexible approach in this case is particularly apparent upon review of the Consent Decree provisions relating to the entry of final judgment. The Consent Decree provides for a dismissal with prejudice on the joint motion of the parties following the satisfactory implementation of the Consent Decree's provisions. (A. 31.) Having moved for dismissal with prejudice under the terms of the Consent Decree, the IBT will not be allowed thereafter to pursue an appeal. See Empire Volkswagon v. World-Wide Volkswagon Corp., 814 F.2d 90, 94 (2d Cir.

1987). Accordingly, the IBT will not be able to obtain review of the issue presented on this appeal following "final judgment" in this case.

In addition, an appeal after final judgment, even if permitted, would be ineffectual. The issue presented on appeal involves the Administrator's authority to veto under the Consent Decree. The IBT seeks clarification of the type of factual record that the Administrator must develop to support a finding that racketeering activity occurred. The strictest application of the final judgment rule would prevent an appeal until the case was dismissed upon joint motion of the parties. Upon dismissal, however, the

Administrator's tenure will be terminated. The clarification sought on appeal, therefore, would be of no value in limiting future conduct of the Administrator.

The district court order is also appealable, prior to final judgment, as a "collateral order." The collateral order doctrine permits the immediate appeal of certain orders that cannot be effectively reviewed after final judgment is entered. See Cohen v. Beneficial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949). To fall within the scope of this exception to the final judgment rule

> the order must satisfy each of three conditions: it must (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) "be effectively unreviewable on appeal from a final judgment."

Van Cauwenberghe v. Baird, 486 U.S. 517, 522 (1988), quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978). The Second Circuit has previously applied this doctrine to other issues arising in this case. See United States v. Intern. Broth. of Teamsters, 931 F.2d at 183 (Election Rules Order and Staffing Order).

The district court's order satisfies each criterion of the collateral order doctrine. First, the district court's decision conclusively determines that the Administrator may exercise his veto authority in the absence of evidence supporting each element of the "racketeering activity" allegedly giving

rise to that authority. It also stands for the proposition that the district court can cure deficiencies in the record by taking judicial notice of the validity of unproven allegations supporting its conclusion that for "decades" past IBT leaders have deprived the IBT membership of its statutory rights through "extortionate acts." Second, this is an important issue in that it allows a court-appointed officer to exceed the authority granted to him under the Consent Decree and to substitute his will for that of the constitutionally-selected representatives of the membership of one of the world's largest trade unions. This particular issue bears no relation to the merits of this civil RICO action. Finally, as noted

above, the court's order is unreviewable on appeal from final judgment.

II. THIS MATTER IS NOT MOOT.

A flexible approach, similar to that applied to the final judgment rule, is also necessary in determining the issue of mootness. Such an approach is appropriate due to the "unique" nature, as previously noted by the Second Circuit, of this massive civil RICO action. See United States v. Intern. Brother. of Teamsters, 931 F.2d at 186. That court has already stated that issues of appellate review arising from the administration of this Consent Decree, because they differ from issues in ordinary legislation, may require a flexible approach. 931 F.2d at 183.

The Independent Administrator and the district court accused the IBT of racketeering activity after the union voluntarily agreed to stop making payments to Windsor pursuant to the printing contract and rebid the contract following procedures approved by the Administrator. These facts should not, however, render the appeal moot. A flexible approach, taking into account the seriousness of the accusations and the unfair manner in which they were issued, leads to the conclusion that the accusations of racketeering activity created a controversy which continues to harm the IBT.

Despite the IBT's compliance with the recommendations of the Administrator's

auditor, the Administrator nonetheless publicly accused the IBT, through its General President, of engaging in racketeering activity. The district court, at the Government's urging, affirmed the Administrator's decision despite its express acknowledgement that the IBT had agreed to rebid the contract. Indeed, the court limited its review to the allegations of racketeering.

Fundamental unfairness results from the Government's success in convincing the court of appeals to dismiss an appeal on principles of mootness which, if applicable, should have prevented the district court from issuing its opinion and order. A flexible approach, which

considers the need to consistently apply legal principles, would prevent the Government's undue advantage gained from the inconsistent approaches taken by the lower courts.

Moreover, the allegations made are of a most serious nature. The courts have previously recognized the irreparable damage that can be inflicted to reputations as the result of allegations of "racketeering." In Plount v. American Home Assurance Co., Inc., 668 F. Supp. 204, 206 (S.D.N.Y. 1987), the court noted:

> If . . . sensitivity toward a defendants' reputation is called for in every garden variety fraud, then surely equal solicitude is necessary for defendants' good names in an action which goes much further and labels them "racketeers."

Accord, Schnitzer v. Oppenheimer & Co., Inc., 633 F. Supp. 92, 97 (D.Or. 1985); Taylor v. Bear Stearns & Co., 572 F. Supp. 667, 682 (N.D.Ga. 1983).

The continuing harm befalling the appellants is increased by the fact that the Administrator and the district court not only accuse, but also conclude that the union officers aided and abetted extortion. A flexible approach to mootness allows for the appropriate consideration of the serious and continuing harm caused by the unfounded conclusions that the union committed a criminal act.

Compounding the unfairness of the racketeering allegations was the choice they forced on the union. The IBT could most clearly protect its right to appeal

the Administrator's conclusions only by failing to improve a bidding process in a manner that would benefit its members. Under the Government's view of mootness, the IBT could preserve its appellate rights only by refusing to rebid the printing contract. A flexible approach to mootness permits the IBT to further the interests of its members while also protecting itself against unsubstantiated conclusions of racketeering activity.

In addition to being justified under a flexible approach, the IBT's appeal of the district court order also falls within a more traditional exception to the mootness doctrine. "It is well settled that a defendant's voluntary cessation of a

challenged practice does not deprive a federal court of its power to determine the legality of the practice." City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982). Accord United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953); Iron Arrow Honor Society v. Heckler, 464 U.S. 67, 71-72 (1983); United States v. Generix Drug Corp., 460 U.S. 453, 456 n.6 (1983); R.C. Bigelow, Inc. v. Unilever N.V., 867 F.2d 102, 106 (2d Cir. 1989).

Cessation of a challenged activity will only render a case moot if "it is 'absolutely clear that the alleged wrongful behavior could not be reasonably expected to recur.'" Gwaltney v. Chesapeake Bay

Foundation, 484 U.S. 49, 66 (1987) (emphasis in original), quoting United States v. Phosphate Export Assn., Inc., 393 U.S. 199, 203 (1968). Accord City of Mesquite, 455 U.S. at 289 and n.10. Indeed, the possibility that . . . [the defendant] may change its mind in the future is sufficient to preclude a finding of mootness." Generix Drug, 460 U.S. at 456 n.6 (emphasis supplied).

Implicit in the Administrator's report is the finding that competitive bidding for the printing contract is required if the IBT General President is to satisfy his obligations to the union membership and avoid what has been described as an extortion of the membership's right to a

democratic union. The district court more explicitly stated that "because prior General Presidents had awarded the printing contracts in the past in even more corrupt ways [i.e., without competitive bidding] does not sanitize McCarthy's conduct." (A. 25.)

Despite the intentions of its current leadership, the IBT is unable to ensure that in the future the printing contract will be awarded with competitive bidding. In fact, for nearly twenty years IBT General Presidents awarded the printing contract without competitive bidding. (Ferguson Dec., Exh. B, p. 7.) The IBT Constitution does not require competitive bidding but empowers the General President

"to employ such help as he may need to carry on" the publication of the magazine. (Pierce Aff. fn. 8, p. 5.)

As noted by this Court in City of Mesquite, where a dispute is "not technically moot [and] an appeal has been properly taken . . . [the court has] no choice but to decide it." 455 U.S. at 289 n.10. The burden of demonstrating mootness "is a heavy one." W.T. Grant, 345 U.S. at 632-33. In this case, the Government has not met that burden.

CONCLUSION

If this Court does not grant certiorari and determine the issues raised herein, the IBT will have been harmed by conclusions of

racketeering activity, stated by the Administrator and restated by the district court, without ever having an appeal heard on the merits of the union's contention that the conclusions are unsubstantiated by evidence.

Respectively submitted,

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END NOTES

1. The Consent Decree is reproduced at A. 28-80.

2. For example, with respect to disciplinary authority the Administrator is granted the same "rights and powers as the IBT's General President and/or General Executive Board under the IBT's Constitution . . . and Title 29 of the United States Code. . . ." (A. 40.) The Administrator has used this power to, among other things, direct local IBT affiliates to cease paying benefits to members convicted of racketeering activity, or having ties to organized crime.

3. With the award to Windsor, the IBT for the first time in its history awarded the magazine printing contract pursuant to a bidding process. For nearly twenty years IBT General Presidents have awarded the printing contract without competitive bidding. (Declaration of Edward T. Ferguson, III in Support of Government's Motion to Dismiss, dated August 1, 1991, Exh. B, p. 7.) Competitive bidding is not required by the IBT Constitution which empowers the General President "to employ such help as he may need to carry on" the publishing of the magazine. (Pierce Aff. fn. 8, p. 5.)

4. The district court opinion and order is reproduced at A. 3-27.

5. See, e.g., In re "Agent Orange" Product Liability Litig., 821 F.2d 139 (2d Cir.), cert. denied, 484 U.S. 953 (1987); Janus Films, Inc. v. Miller, 801 F.2d 578 (2d Cir. 1986); Sanchez v. Maher, 560 F.2d 1105 (2d Cir. 1977); New York State Ass'n for Retarded Children, Inc. v. Carey, 596 F.2d 27 (2d Cir.), cert. denied sub nom. Coughlin v. New York State Ass'n for Retarded Children, Inc., 444 U.S. 836 (1979).